



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU, MOBILITY DIVISION

SEEKS COMMENT ON ACCESS 220, LLC'S REQUEST FOR WAIVER OF CONSTRUCTION REQUIREMENTS AND EXTENSION OF TERMS OF ITS LICENSES IN THE 220 MHz SERVICE

Comment Date: November 1, 2004

Reply Comment Date: November 15, 2004

On September 16, 2004, Access 220, LLC ("Access 220") filed a Request for Renewal of its Phase I Nationwide 220 MHz Licenses, and for Waivers of Various Part 90 rules ("Waiver Request").¹ Specifically, Access 220 requests that the Commission: (1) extend the license terms for all of its 220 MHz licenses so that they have a uniform expiration date of September 19, 2019, thereby creating a fifteen-year license term; (2) eliminate all interim performance requirements for these licenses, including the substantial service requirement associated with the renewal of its Phase I Nationwide licenses; (3) require that Access 220 meet the substantial service standard only at the new uniform September 19, 2019 renewal date; (4) apply the performance requirements for the 700 MHz Guard Band licenses to all of Access 220's licenses in the 220 MHz service (these requirements are described in sections 27.14(a) and 27.607(a) of the Commission's rules); and (5) consolidate all of Access 220's 220 MHz service licenses under a single license and call sign.²

In support of its Waiver Request, Access 220 points out that, in 2002, the Wireless Telecommunications Bureau granted its request for waivers to allow it to act as a band manager for the spectrum authorized under its 220 MHz service licenses.³ Access 220 states, however, that despite its diligent efforts to promote its 220 MHz spectrum as a wireless solution for a variety of spectrum users, it still faces various obstacles in developing its band manager business, including the lack of viable equipment for the band. Access 220 argues that, because band managers are primarily engaged in the leasing of their spectrum to third parties, the traditional construction requirements are not appropriate for

¹ See Universal Licensing System file numbers 0001874165, 0001874077, 0001873630, and 0001873639.

² To renew the Phase I Nationwide licenses without requiring a demonstration of substantial service will require the waiver of sections 90.743(a)(1),(b)(1-3), and 90.725(a). To extend the terms of all of Access 220's 220 MHz licenses until September 19, 2019 and eliminate all interim performance requirements will require the waiver of sections 90.743(c), 90.765, 90.767, and 90.769.

³ See Access 220, LLC, Request for Waivers to Provide Band Management Services Utilizing Licenses in the 220-222 MHz Band, *Memorandum Opinion and Order*, 17 FCC Rcd 20464 (2002).

band managers. Access 220 argues that the 220 MHz service presents particular difficulties because it is highly fragmented and, as a result, has been underdeveloped for many years. Access 220 claims that, as a result of this fragmentation, it holds its spectrum under more than a hundred separate licenses, with varying geographic coverage areas, construction deadlines, and renewal dates. Access 220 contends that, because most of its prospective customers need to employ channels from multiple licenses to deploy a communications solution, the patchwork of license terms and construction requirements is creating uncertainty among prospective customers and thus jeopardizing the viability of the band manager concept. Access 220 urges the Commission to adopt license terms for its 220 MHz licenses which are similar to those of band managers in the 700 MHz Guard Band, which have fifteen-year terms which expire in 2015, and which are not required to meet performance requirements until the renewal date.⁴ Access 220 contends that the adoption of such license terms for its 220 MHz licenses would eliminate unnecessary administrative burdens for itself and the Commission, promote the public interest by creating an environment for the most flexible and efficient use of the spectrum, and provide an opportunity for commercial success in the 220 MHz service.

We note that many of Access 220's applications were placed on a routine weekly Public Notice, Report Number 1948, released September 29, 2004 to allow public comment. For administrative ease, we hereby consolidate the comment period for Access 220's Waiver Request and interested parties may file comments on or before November 1, 2004. Parties interested in submitting reply comments must do so on or before November 15, 2004. All comments should reference the subject request including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-325, Washington, D.C. 20554.⁵ A copy of each filing also should be sent to: (1) Best Copy and Printing, Inc., Portals II, 445 Twelfth Street, S.W., Suite CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center (RIC), 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Allen A. Barna, Mobility Division, Wireless Telecommunications Bureau, 445 Twelfth Street, S.W., Room 6324, Washington, D.C. 20554.

The Waiver Request and responsive comments and reply comments will be available for inspection and duplication during regular business hours in the Reference Information Center (RIC) of the Consumer Information Bureau (CIB), Federal Communications Commission, 445 Twelfth Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 Twelfth Street, S.W., Suite CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail www.bcpweb.com. For further information regarding the public reference file for this request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Because of the policy implications and potential impact of this proceeding on persons not parties to this request, we believe it would be in the public interest to treat this matter as a permit-but-disclose proceeding under the *ex parte* rules, *see* Sections 1.1200(a) and 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206, rather than a restricted proceeding under Section 1.1208 of the

⁴ *See* Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

⁵ The address for FCC filings should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

Commission's Rules, 47 C.F.R. § 1.1208. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject request, subsequent to the release of this Public Notice, will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

Action by the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

FOR FURTHER INFORMATION CONTACT Thomas Derenge, Mobility Division, Wireless Telecommunications Bureau at (202) 418-2451, TTY (202) 418-1536 or via email to thomas.derenge@fcc.gov.

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